



MAR 23 2012

Dr. William N. Johnston, Ed.D.  
President  
Wesley College  
120 North State Street  
Dover, DE 19901-3875

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Dear Dr. Johnston:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Wesley College (Wesley) a total of \$60,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on Wesley's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; procedures for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; written procedures to encourage professional counselors to inform the persons they are counseling about procedures on voluntary, confidential reporting of crimes; and a statement advising interested parties where they may obtain law enforcement information regarding registered sex offenders in accordance with the Violent Crime Control and Law Enforcement Act of 1994. 34 C.F.R. § 668.46(b)(2). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. An institution must also specifically report on

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any crime that manifests evidence of a hate crime. 34 C.F.R. § 668.46(c). An institution must, in a manner that is timely and that will aid in the prevention of similar crimes, report to the campus community about such crimes, and about crimes considered by the institution to represent a threat to its students and employees. 34 C.F.R. § 668.46(e). The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

On May 5, 2006, Security On Campus, Inc. (SOC) submitted a complaint to the Department alleging that Wesley had violated several provisions of the Clery Act. SOC stated that the complaint was filed on behalf of a group of Wesley students, including students associated with the College's newspaper, *The Whetstone*. The complaint alleged that Wesley failed to issue a timely warning in response to a forcible sex offense that occurred on February 12, 2006. On that date, a female student reported to Wesley's Office of Safety and Security (OSS) that she had been raped by an acquaintance in her Carpenter Hall room. The complaint also alleged that Wesley's ASR did not contain certain required policy disclosures.

In light of the SOC complaint, the Department conducted an off-site focused program review of Wesley's compliance with the Clery Act. The Department notified Wesley of the initiation of the review in a letter dated September 13, 2006. The letter explained the allegations filed by SOC and required Wesley to submit a comprehensive response to the allegations as well as specific information regarding its safety and security programs. Wesley submitted its initial response to the Department on October 13, 2006. After reviewing Wesley's response and supplemental information, the Department issued its Final Program Review Determination (FPRD) letter to Wesley on April 26, 2010. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that Wesley failed to properly issue a timely warning to its campus community regarding a forcible sex offense; failed to open its crime log to the public<sup>1</sup>; and omitted required policy statements in its ASR.

### **WESLEY FAILED TO PROPERLY ISSUE A TIMELY WARNING TO ITS CAMPUS COMMUNITY REGARDING A SEXUAL ASSAULT INCIDENT**

The HEA and the Department's regulations require that institutions participating in the Title IV, HEA programs must, in a manner that is timely and that will aid in the prevention of similar crimes, provide a timely warning to the campus if certain crimes are reported to campus security authorities and are considered to represent a threat to students and employees. §485(f)(3) of the HEA; 34 C.F.R. § 668.46(e). The crimes that

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<sup>1</sup> The FPRD included an additional finding as part of (Finding #2) regarding the institution's failure to maintain a daily crime log. The Department has decided not to impose a fine relating to that Finding.

must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. An institution must also specifically report on any crime that manifests evidence of a hate crime. §485(f)(3) of the HEA; 34 C.F.R. § 668.46(c). The only exception to this requirement is if the crime is reported to a pastoral or professional counselor. 34 C.F.R § 668.46(e)(2).

Wesley did not issue a timely warning to its students and staff after a female student reported that she had been raped by an acquaintance on February 12, 2006. On that date, the victim reported to Wesley's OSS that she had been raped during the early morning hours. Wesley's security officials immediately determined that the victim was indeed sexually assaulted and took her to Kent General Hospital where a sexual assault kit was administered and additional medical testing and evaluations were performed. On the same day, Wesley's OSS notified the Dover Police Department (DPD) and Victims Services officials about the alleged rape.

On February 13, 2006, the alleged assailant contacted the victim and substantively confessed to the commission of the crime via instant message. From February 12, 2006 to February 15, 2006, the alleged assailant continued to live in a residence hall and was free to move around the campus. On February 15, 2006, the assailant was arrested by DPD officers and charged with rape in the second degree, a Class B felony in the State of Delaware. On February 16, 2006, Wesley's counseling staff sent a report to the College's Dean of Students, noting that the February 12, 2006 incident appeared to be "a violent sex-based attack." On February 20, 2006, the alleged assailant was formally dismissed from Wesley.

Wesley's response to the Department asserts that "Wesley's Dean of Students investigated the February 12 incident by, *inter alia*, speaking to the victim and the accused student." Wesley's response to the Department also contends that there was no "continuing threat" posed by the perpetrator's continued presence on campus and that he was subsequently banned from the campus. However, Wesley did not present any evidence to indicate that the College collected or evaluated any information for the purpose of determining if a timely warning was warranted. Wesley's campus community learned of the February 12, 2006 alleged rape through reports in the local newspaper. The FPRD notes that Wesley's Dean of Students allegedly informed *The Whetstone* that there were legal constraints on any disclosure.

The Department has determined that Wesley should have issued a timely warning to its campus community after the February 12, 2006 forcible sexual assault incident, under the HEA and the Department's requirements. There is no evidence that Wesley evaluated the facts of the case and determined that there was not a threat to other students. The assailant continued to live in a residence hall and was free to move around campus. It is essential to students, employees, and the public that institutions provide timely warnings to ensure the safety and well being of the campus community and prevent further crimes.

## **FAILURE TO MAKE THE CRIME LOG OPEN TO PUBLIC INSPECTION**

Institutions participating in Title IV, HEA programs that maintain a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include the nature, date, time, and general location of each crime; and the disposition of the complaint, if known. The institution must make an entry or an addition to an entry to the log within two business days of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim. An institution may withhold information if there is clear and convincing evidence that the release of the information would jeopardize an ongoing criminal investigation or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence. §485(f)(4) of the HEA; 34 C.F.R. § 668.46(f). The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection. §485(f)(4) of the HEA; 34 C.F.R. § 668.46(f)(5).

Wesley maintained a crime log but did not make it open to public inspection. According to the SOC complaint, a student journalist stated that Wesley denied him access to the crime log after the February 12, 2006 forcible sexual assault on a female student. In its response, Wesley acknowledged that a College Security Officer refused to permit the student journalist to review the crime log. Wesley contends that the officer mistakenly believed that the journalist was requesting access to the incident report, which included the victim's name and which the officer believed should not be disclosed under the Federal Educational Records Privacy Act (FERPA). An e-mail written by Wesley's Dean of Students on April 20, 2006 claimed that, "the incident was reported in our daily log including the names of both the alleged victim and the accused. Consequently, to release that security log would have violated the victim's confidentiality. The format of the daily crime log, which will be implemented immediately, will enable us to release important information should there be such requests."

The Clery Act and the Department's regulations require institutions to maintain and permit public access to a crime log that provides accurate and complete information about crimes reported to campus security officials. Wesley could have redacted or otherwise blocked information in the crime log that would have violated the confidentiality of the victim. Wesley did not demonstrate that it had an appropriate legal basis to refuse to provide public access to the crime log.

## **WESLEY'S ANNUAL SECURITY REPORT WAS IMPROPERLY FORMATED AND OMITTED REQUIRED POLICY STATEMENTS**

The Department's regulations require that participating institutions prepare an ASR that includes: a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes such as forcible sex offenses; procedures for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; written procedures to encourage professional counselors to inform the persons they are counseling about procedures on voluntary, confidential reporting of crimes; and a statement advising interested parties where they may obtain law enforcement information regarding registered sex offenders in accordance with the Violent Crime Control and law Enforcement Act of 1994. 34 C.F.R. § 668.46(b)(12).

Wesley's ASR for calendar year 2005 did not include: a description of the College's procedures for preparing the annual disclosure of crime statistics; a statement regarding any procedures for the reporting of crimes on a voluntary and confidential basis by professional or pastoral counselors; and a statement advising interested parties where they may obtain law enforcement information regarding registered sex offenders in accordance with the Violent Crime Control and law Enforcement Act of 1994. Wesley's calendar year 2005 ASR also did not have an adequate statement of the College's policy on the issuance of timely warnings. The ASR lacked details about the type of incidents that may trigger a warning; the decision-making process to determine if a warning is warranted; the officials charged with the responsibility to issue timely warnings; or the means by which such warnings would be disseminated. Wesley's ASR for calendar year 2005 also did not have statistical fields for incidents or arrests occurring on non-campus property or public property. Additionally, the ASR did not provide a geographical breakdown for disciplinary referrals.

Wesley has since revised its policies and its statements regarding campus safety to address policies that were not previously included. However, the efforts do not excuse Wesley's failure to have the required policy statements at the time of the review, as required by the Clery Act and the Department's regulations. The omission of these required fields limits the ability of users of the ASR to make meaningful comparisons and may result in the underreporting of incidents that may have occurred in the excluded geographical areas. Accurate and complete disclosure of policies and properly formatted statistics allow members of the campus security to be fully informed and actively provide for their own safety.

## **II.**

In determining the amount of fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year

for which complete funding data is available for Wesley is 2010-2011 award year. According to the Department records, Wesley received approximately \$3,168,006 in Federal Pell Grant (Pell) funds, \$16,719,138 in Federal Direct Loan funds and \$555,657 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,831,456, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,415,923, and for institutions participating in the Campus-Based programs, the median funding level is \$272,450. Accordingly, Wesley is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at Wesley are very serious. Wesley did not meet its obligations under the HEA or the Department's regulations. Those failures may have endangered Wesley's students and employees who must be able to rely on the timely warning of serious crimes, publicly available crime logs, and disclosures of campus crime policies and statements to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and Wesley's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed \$27,500 for Wesley's failure to issue a timely warning after the February 12, 2006 sexual assault incident. The intent of the timely warning requirement is to provide information to enable members of the campus community to protect themselves. In this case, Wesley had evidence that a female student had been sexually assaulted. The most reasonable conclusion based on the particular events is that the assailant was a danger to the campus community. However, the institution has not provided any evidence that it considered such a warning. Failure to issue a timely warning after a sexual assault was reported and the alleged assailant confessed was an egregious violation, which endangered the entire campus community.

I have assessed \$5,000 for Wesley's failure to open its crime log to a student journalist who requested to view the crime log after the February 12, 2006 forcible sexual assault incident. This is a serious violation because by denying the student journalist an opportunity to view the crime log, Wesley implicitly denied the campus community an opportunity to know the College's accurate and complete campus crime information to make informed decisions about personal safety.

I have assessed \$27,500 for Wesley's failure to include required policy statements in its calendar year 2005 ASR. This is a serious violation because current and prospective students/employees must be able to rely on an accurate and complete ASR to make important personal safety decisions.

Dr. William N. Johnston

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The fine of \$60,000 will be imposed on April 12, 2012, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Wesley may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If Wesley chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group  
U.S. Department of Education  
Federal Student Aid/Program Compliance  
830 First Street, NE – UCP-3, Room 84F2  
Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of Wesley's case to a hearing official who will conduct an independent hearing. Wesley is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If Wesley does not request a hearing but submits written material instead, I will consider that material and notify Wesley of the amount of fine, if any, that will be imposed.

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT WESLEY SUBMITS MUST BE RECEIVED BY APRIL 12, 2012; OTHERWISE, THE \$60,000 FINE WILL BE EFFECTIVE ON THAT DATE.**

If you have any questions or desire any additional explanation of Wesley's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary E. Gust". The signature is fluid and cursive, with a large initial "M" and "G".

Mary E. Gust, Director  
Administrative Actions and Appeals Service Group  
Federal Student Aid/Program Compliance  
U.S. Department of Education

Enclosure